THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.27774 of 1996

Dated:03.08.2006

Between:

M/s.Vijaya Foundry.

…Petitioners

and

The District Collector, Ranga Reddy District, and others.

…Respondents

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ORDER:

The petitioner is a Firm. The said Firm purchased the land admeasuring Acs.29.37 guntas in Survey Nos.159 (part) to 162 situated at Mallapur Village, Uppal Mandal, Ranga Reddy District, from Masetty Muthaiah and fourteen others through a registered sale deed dated 28.04.1965. The petitioner got the property mutated in its name and was enjoying possession. It appears four persons claiming themselves to be the legal heirs of the protected tenant, Balaiah, filed an application under Section 32 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Act'), and the same was dismissed on 28.05.1993 by the Mandal Revenue Officer. In the meanwhile, the Government of Andhra Pradesh also acquired a part of the land in Survey Nos.159 and 162/2 and paid compensation to the petitioner. After a long time thereafter, respondents 3 to 8 filed an application under Section 40 of the Act before the Mandal Revenue Officer for grant of succession in respect of the subject land. By impugned order dated 06.08.1996, the Mandal Revenue Officer granted succession in favour of respondents 3 to 8, aggrieved by which, the present Writ Petition is filed.

Though notices are served, none appears for respondents 3 to 8, and no counter affidavit is filed by respondent No.1 (District Collector) and respondent No.2 (Mandal Revenue Officer).

Inter alia, it is contended by the learned Counsel for the petitioner that though Section 40 of the Act declares that the protected tenancy is heritable by lineal decedents of the protected tenants, the said provision does not confer any power on the Mandal Revenue Officer to grant succession to the alleged legal heirs of protected tenants. He further submits that the petitioner purchased the property from fifteen persons who include the landholders as well as the protected tenants

and therefore, respondents 3 to 8 have no right to claim succession in respect of the property comprised in Survey Nos.159 to 162 of Mallapur Village.

The legal position is not denied by the learned Assistant Government Pleader for Revenue (General). In a recent judgment in W.P.No.13679 of 2006, dated 07.07.2006, I have considered this aspect of the matter in detail. After referring to the provisions of the Act and the relevant Rules, this Court held as under.

> Reading Section 40 of the Act and the Tenancy Rules together, it must be held that though under Section 40 of the Act, Tahsildar has no power to decide questions of succession to the protected tenancy, in the event of acquisition of rights, Tahsildar can conduct verification under Rule 14 of the Rules and order amendments in the register of mutations. Such a procedure is also contemplated under Section 4 of the A.P. Rights in Land and Pattadar Pass Book Act, 1971 and Rule 18 of the A.P. Rights in Land and Pattadar Pass Book Rules, 1989. The enquiry contemplated for amending mutation in the event of acquisition of rights either by survivorship or succession is altogether different from adjudicating the question of succession. Even while dealing with the application for recording for amendment of entries in the mutation register, if there is a dispute by the applicant, the MRO should relegate such party to the civil court.
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> This Court in an unreported judgment in W.P.No.7430 of 2000 held that the question as to who are the legal heirs of a deceased protected tenant has to be decided by a competent court of civil jurisdiction. A similar view was expressed in another unreported judgment in W.P. No.7018 of 2000. The decisions cited by the learned Counsel for the petitioner nowhere lay down that the Tahsildar/MRO is conferred with the power to decide questions of succession. By the very nature of enquiry involved in such application, the Tahsildar/MRO is not competent to decide questions of succession.
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> In this case, though the Joint Collector having regard to the provisions of Section 40 of the Act came to right conclusions, made passing observations that the petitioners failed to prove protected tenancy. Such an observation was not necessary. Therefore, as and when application under Section 32 of the Act is taken up by the jurisdictional MRO, the same has to be decided without any reference to the order of the Joint Collector. It is equally necessary that in the event of the petitioners approaching the civil court claiming

succession, the civil court has to decide the matter independently without in any manner influenced by the observations made by the Joint Collector or this Court herein above.

Following the same, it must be held that the Mandal Revenue Officer is not vested with any power to decide the question of succession among the legal heirs of the protected tenants. The Writ Petition is therefore, allowed. No costs.

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(V.V.S.RAO, J)

03.08.2006
vs